

1 Richard M. Heimann (State Bar No. 63607)
2 Kelly M. Dermody (State Bar No. 171716)
3 Eric B. Fastiff (State Bar No. 182260)
4 Brendan Glackin (State Bar No. 199643)
5 Dean Harvey (State Bar No. 250298)
6 Anne B. Shaver (State Bar No. 255928)
7 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
8 275 Battery Street, 29th Floor
9 San Francisco, California 94111-3339
10 Telephone: 415.956.1000
11 Facsimile: 415.956.1008

12 Joseph R. Saveri (State Bar No. 130064)
13 Lisa J. Leebove (State Bar No. 186705)
14 James G. Dallal (State Bar No. 277826)
15 JOSEPH SAVERI LAW FIRM, INC.
16 505 Montgomery, Suite 625
17 San Francisco, CA 94111
18 Telephone: 415.500.6800
19 Facsimile: 415.395.9940

20 *Co-Lead Class Counsel*

21 [Additional counsel listed on signature page]

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IN RE: HIGH-TECH EMPLOYEE
ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

ALL ACTIONS

Master Docket No. 11-CV-2509-LHK

**PLAINTIFFS' BRIEF REGARDING
THE IMPACT OF THE PROPOSED
SETTLEMENT ON PLAINTIFFS'
SUPPLEMENTAL MOTION FOR
CLASS CERTIFICATION**

1 Pursuant to the Court's July 14, 2013 Case Management Order (Dkt. 460), Plaintiffs
2 submit this brief regarding the effect of the proposed settlement between Plaintiffs and
3 Defendants Lucasfilm, Ltd. ("Lucasfilm") and Pixar on Plaintiffs' Supplemental Motion for Class
4 Certification.¹

5 On July 12, 2013, following the all-party mediation and extensive subsequent
6 negotiations, Plaintiffs reached a settlement with two of the seven Defendants—Pixar and
7 Lucasfilm. With the Court's approval, the settlement will resolve all of the claims of the
8 proposed class of technical employees, as that class has been defined by Plaintiffs in their
9 Supplemental Motion for Class Certification (the "Technical Class"²), for settlement purposes
10 and only as against Pixar and Lucasfilm. In other words, the proposed settlement class is
11 coextensive with the proposed litigation class. Plaintiffs' claims against the other five
12 Defendants—Adobe, Apple, Google, Intel, and Intuit—on behalf of the same employees will
13 proceed. Upon completion of settlement documentation, Plaintiffs will promptly present the
14 Court with a motion for preliminary approval of the settlement, as well as a motion for
15 certification under Rule 23(b)(3) of the Technical Class (including employees of all of the
16 Defendants, both settling and not settling) only for purposes of settling the claims against
17 Lucasfilm and Pixar. Plaintiffs will suggest a schedule for the approval process in their
18 preliminary approval moving papers.

19 The settlement preserves Plaintiffs' right to litigate against the non-settling Defendants for
20 the entire amount of Plaintiffs' damages based on joint and several liability under the antitrust
21 laws. Beyond the scheduling of preliminary and final approval motions to effectuate the
22 settlement, there is no reason to delay or otherwise modify the litigation schedule set by the
23 Court, including the August 8, 2013 hearing on the Supplemental Motion for Class Certification,
24 the completion of expert discovery, dispositive motions, and trial. *See* May 15, 2013 Case
25 Management Order (Dkt. 421).

26
27 ¹ Pursuant to the Court's Order of July 14 (Dkt. 460), lead trial counsel met and conferred with
opposing counsel on July 24, 2013 and exchanged draft briefs.

28 ² *See* Supp. Mot. at iii (Dkt. 418); Oct. 1, 2012 Expert Report of Edward Leamer, App. B (Dkt.
190).

As certification of the class for settlement purposes is distinct from certification of the class for litigation purposes, the settlement will not have an impact on Plaintiffs' pending Supplemental Motion for Class Certification, beyond the fact that certification for litigation purposes is only sought to pursue claims against the five remaining Defendants. Generally, the same Rule 23 standard applies for certification of a proposed class, whether for litigation or settlement purposes. *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 619, (1997); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019-1023 (9th Cir. 1999).

Respectfully submitted,

Dated: July 26, 2013

LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP

By: /s/ Kelly M. Dermody
Kelly M. Dermody

Richard M. Heimann (State Bar No. 63607)
Kelly M. Dermody (State Bar No. 171716)
Eric B. Fastiff (State Bar No. 182260)
Brendan Glackin (State Bar No. 199643)
Dean Harvey (State Bar No. 250298)
Anne B. Shaver (State Bar No. 255928)
275 Battery Street, 29th Floor
San Francisco, California 94111-3339
Telephone: 415.956.1000
Facsimile: 415.956.1008

JOSEPH SAVERI LAW FIRM, INC.

By: /s/ Joseph R. Saveri
Joseph R. Saveri

Joseph R. Saveri (State Bar No. 130064)
Lisa J. Leebove (State Bar No. 186705)
James G. Dallal (State Bar No. 277826)
JOSEPH SAVERI LAW FIRM, INC
255 California, Suite 450
San Francisco, CA 94111
Telephone: 415. 500.6800
Facsimile: 415. 395.9940

Co-Lead Counsel for Plaintiff Class